80-1813

Office-Supreme Court, U.S.
FILED
APR 28 1981
ALEXANDER L. STEVAS,
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No.

In The

Supreme Court of the United States

October Term, 1980

OREST T. DUBNO, Commisioner of Revenue Services
of the State of Connecticut, et al,
Petitioner

vs.

MOBIL OIL CORPORATION, et al.,
Respondent

CARL R. AJELLO, Attorney General
of the State of Connecticut, et al,
Petitioner

vs.

TEXACO INC., et al
Respondent

ELLA T. GRASSO, Governor of the State of Connecticut, et al
Petitioner

vs.

AMERADA HESS CORPORATION
Respondent

APPENDIX TO PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

VOLUME II

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APPENDIX D

Connecticut
PUBLIC ACT NO. 80-71

AN ACT CONCERNING STATE REVENUE FOR THE FISCAL YEAR COMMENCING JULY 1, 1980.

Be it enacted by the Senate and House of Representatives in General Assembly convened:

Section 1. (NEW) Any petroleum company which is engaged primarily in the refining and distribution of petroleum products and distributes such products to wholesale and retail dealers for marketing and distribution in this state shall pay a quarterly tax at the rate of two percent of gross earnings in each taxable quarter derived by such company from the sale of petroleum products in this state. No deduction shall be made from such gross earnings for any commission, rebate or other payment, except a refund resulting from an error or overcharge. Each such company shall, on or before the last day of January, April, July and October of each year, render to the commissioner of revenue services under oath of its treasurer or the person performing the duties of treasurer or of an authorized agent or officer, a return on forms prescribed or furnished by said commissioner, including in respect to such company the amount of gross earnings from the sale of petroleum products within this state for the quarter ending with the last day of the preceding month. The tax imposed under this act shall be in addition to any other tax imposed by Connecticut with respect to which such company is liable. For purposes of sections 1 to 16, inclusive, of this act "petroleum products" includes any product which contains or is made from petroleum or a petroleum derivative and "gross earnings" are those earnings from the sale of petroleum products to which the sales factor is applied under subdivision (3) of section 12-218 of the general statutes and those earnings from such sales made by any corporation in which any such petroleum company owns not less than twenty-five percent of the stock of such corporation.

* * *

Sec. 7. (NEW) The tax imposed under section 1 of this act shall be due and payable upon the last day upon which a return may be filed without penalty under said section 1. Upon the filing of such return, the full amount of the tax payable, as the same is computed by the taxpayer, shall be paid to the commissioner of revenue services in cash or by check, draft or money order drawn to the order of the commissioner of revenue services. Said commissioner shall, within three years after the due date for filing such return, or in the case of a completed return filed after such due date, within three years after the date on which such return was received by said commissioner, examine it and in case any error is disclosed by such examination, within thirty days after such disclosure, notify the taxpayer thereof. Within thirty days of the mailing of such notice, the taxpayer shall pay to said commissioner, in cash or by check, draft or money order drawn to the order of the commissioner of revenue services, any additional amount of tax shown to be due by the corrected return or shall be paid by the state treasurer, upon order of the comptroller, any amount shown to be due such taxpayer by such corrected return. The failure of such taxpayer to receive any notice required by this section shall not relieve such taxpayer of the obligation to pay the tax imposed under section 1 of this act or any interest or penalties thereon. When, before the expiration of the time prescribed in this section for the examination of the return or the assessment of said tax, both said commissioner and such taxpayer have consented in writing to such examination or assessment after such time, the return may be examined and said tax may be assessed at any time prior to the expiration of the period agreed upon. The period so agreed upon may be extended by subsequent agreements in writing made before the expiration of the period previously agreed upon. Said commissioner may also in such a case waive the statute of limitations against a claim for refund by such taxpayer.

* * *

Sec. 13. (NEW) (a) It is not the intention of the general assembly that the tax imposed under section 1 of this act be con-

strued as a tax upon purchasers of petroleum products, but that such tax shall be levied upon and be collectible from petroleum companies as defined in said section 1, and that such tax shall constitute a part of the operating overhead of such companies.

(b) No petroleum company subject to the tax imposed under section 1 of this act shall raise its posted wholesale rack price in Connecticut for any petroleum product exempt from the federal Emergency Petroleum Allocation Act (P.L. 93-159) by an amount higher than the average amount by which such company raises its wholesale rack price for such product in all ports on the eastern coast of the United States.

* * *

Sec. 15. (NEW) If any section, part, clause or phrase in sections 1 to 16, inclusive, of this act, is for any reason held to be invalid or unconstitutional, sections, parts, clauses and phrases in said sections not held to be invalid or unconstitutional shall not be affected and shall remain in full force and effect.

* * *

Sec. 30. This act shall take effect July 1, 1980, provided (1) sections 1 to 16, inclusive, shall be applicable to calendar quarters commencing on or after July 1, 1980, (2) sections 22, 25, 26, 27 and 29 shall take effect from passage and (3) section 28 shall take effect January 1, 1981.

APPENDIX E

Emergency Petroleum Allocation Act with Amendments as Codified

§ 751. Congressional findings and declaration of purpose

(a) The Congress hereby determines that —

(1) shortages of crude oil, residual fuel oil, and refined petroleum products caused by inadequate domestic production, environmental constraints, and the unavailability of imports sufficient to satisfy domestic demand, now exist or are imminent;

(2) such shortages have created or will create severe economic dislocations and hardships, including loss of jobs, closing of factories and businesses, reduction of crop plantings and harvesting, and curtailment of vital public services, including the transportation of food and other essential goods; and

(3) such hardships and dislocations jeopardize the normal flow of commerce and constitute a national energy crisis which is a threat to the public health, safety, and welfare and can be averted or minimized most efficiently and effectively through prompt action by the Executive branch of Government.

(b) The purpose of this chapter is to grant to the President of the United States and direct him to exercise specific temporary authority to deal with shortages of crude oil, residual fuel oil, and refined petroleum products or dislocations in their national distribution system. The authority granted under this chapter shall be exercised for the purpose of minimizing the adverse impacts of such shortages or dislocations on the American people and the domestic economy.

Pub.L. 93-159, § 2, Nov. 27, 1973, 87 Stat. 628.

§ 752. Definitions

For purposes of this chapter:

(1) The term "branded independent marketer" means a person who is engaged in the marketing or distributing of refined petroleum products pursuant to —

(A) an agreement or contract with a refiner (or a person who controls, is controlled by, or is under common control with such refiner) to use a trademark, trade name, service mark, or other identifying symbol or name owned by such refiner (or any such person), or

(B) an agreement or contract under which any such person engaged in the marketing or distributing of refined petroleum products is granted authority to occupy premises owned, leased, or in any way controlled by a refiner (or person who controls, is controlled by, or is under common control with such refiner),

but who is not affiliated with, controlled by, or under common control with any refiner (other than by means of a supply contract, or an agreement or contract described in subparagraph (A) or (B) and who does not control such refiner.

(2) The term "nonbranded independent marketer" means a person who is engaged in the marketing or distributing of refined petroleum products, but who (A) is not a refiner, (B) is not a person who controls, is controlled by, is under common control with, or affiliated with a refiner (other than by means of a supply contract), and (C) is not a branded independent marketer.

(3) The term "independent refiner" means a refiner who (A) obtained, directly or indirectly, in the calendar quarter which ended immediately prior to November 27, 1973,

more than 70 per centum of his refinery input of domestic crude oil (or 70 per centum of his refinery input of domestic and imported crude oil) from producers who do not control, are not controlled by, and are not under common control with, such refiner, and (B) marketed or distributed in such quarter and continues to market or distribute a substantial volume of gasoline refined by him through branded independent marketers or nonbranded independent marketers.

(4) The term "small refiner" means a refiner whose total refinery capacity (including the refinery capacity of any person who controls, is controlled by, or is under common control with such refiner) does not exceed 175,000 barrels per day.

(5) The term "refined petroleum product" means gasoline, kerosene, distillates (including Number 2 fuel oil), LPG, refined lubricating oils, or diesel fuel.

(6) The term "LPG" means propane and butane, but not ethane.

(7) The term "United States" when used in the geographic sense means the States, the District of Columbia, Puerto Rico, and the territories and possessions of the United States.

Pub.L. 93-159, § 3, Nov. 27, 1973, 87 Stat. 628.

§ 753. Mandatory allocation

Authority to promulgate regulations covering crude oil, residual fuel oil, and refined petroleum products

(a) Not later than fifteen days after November 27, 1973, the President shall promulgate a regulation providing for the mandatory allocation of crude oil, residual fuel oil, and each refined petroleum product, in amounts specified in (or deter-

mined in a manner prescribed by) and at prices specified in (or determined in a manner prescribed by) such regulation. Subject to subsection (d) of this section, such regulation shall take effect not later than fifteen days after its promulgation. Such regulation shall apply to all crude oil, residual fuel oil, and refined petroleum products produced in or imported into the United States.

Requisite areas of coverage for regulations; price regulations; unobtainability or curtailment of other fuels; limitations on pricing policy

(b)(1) The regulation under subsection (a) of this section, to the maximum extent practicable, shall provide for —

(A) protection of public health (including the production of pharmaceuticals), safety and welfare (including maintenance of residential heating, such as individual homes, apartments and similar occupied dwelling units), and the national defense;

(B) maintenance of all public services (including facilities and services provided by municipally, cooperatively, or investor owned utilities or by any State or local government or authority, and including transportation facilities and services which serve the public at large);

(C) maintenance of agricultural operations, including farming, ranching, dairy, and fishing activities, and services directly related thereto;

(D) preservation of an economically sound and competitive petroleum industry; including the priority needs to restore and foster competition in the producing, refining, distribution, marketing, and petrochemical sectors of such industry, and to preserve the competitive viability of independent refiners, small refiners, nonbranded independent marketers, and branded independent marketers;

(E) the allocation of suitable types, grades, and quality of crude oil to refineries in the United States to permit such refineries to operate at full capacity;

(F) equitable distribution of crude oil, residual fuel oil, and refined petroleum products at equitable prices among all regions and areas of the United States and sectors of the petroleum industry, including independent refiners, small refiners, nonbranded independent marketers, branded independent marketers, and among all users;

(G) allocation of residual fuel oil and refined petroleum products in such amounts and in such manner as may be necessary for the maintenance of, exploration for, and production or extraction of —

(i) fuels, and

(ii) minerals essential to the requirements of the United States.

and for required transportation related thereto;

(H) economic efficiency; and

(I) minimization of economic distortion inflexibility, and unnecessary interference with market mechanisms.

(2) In specifying prices (or prescribing the manner for determining them), the regulation under subsection (a) of this section —

(A) shall provide for a dollar-for-dollar passthrough of net increases in the cost of crude oil, residual fuel oil, and refined petroleum products at all levels of distribution from the producer through the retail level;

(B)(i) shall not permit any net crude oil cost increases —

(I) which are incurred by a refiner during the calendar month immediately preceding the effective date of this paragraph, or in any month thereafter, and

(II) which are not passed through in prices charged pursuant to such regulation in the 2 calendar months following the calendar month in which such crude oil cost increases were incurred,

to be passed through by such refiner in any month subsequent to the 2 calendar months following the calendar month in which such crude oil cost increases were incurred, unless the President makes the findings specified in clause (ii)(III)(aa), and such passthrough is consistent with the requirements specified in clause (ii)(II)(bb).

(ii) shall not permit the passthrough in any month of —

(I) any net crude oil cost increases incurred by a refiner not later than the last day of the calendar month which begins two months prior to the effective date of this paragraph and not passed through by the end of the last calendar month prior to the effective date of this paragraph unless such passthrough is not in excess of 10 percent of the total amount of such increased crude oil costs not passed through as of the last day of the last calendar month prior to the effective date of the amendment promulgated under section 757(a) of this title; and

(II) any net crude oil cost increases incurred by a refiner after the effective date of this paragraph, which net crude oil cost increases were not passed through within the 2 calendar months following the calendar month in which such crude oil cost increases were incurred, unless —

(aa) the President finds, and reports to the Congress with respect to such findings, that a passthrough of such crude oil cost increases is necessary to allevi-

ate the impact on refiners, marketers, or consumers of significant increases in costs, to provide for equitable cost recovery consistent with the attainment, to the maximum extent practicable, of the objectives specified in paragraph (1), or to avoid competitive disadvantage; and

(bb) such passthrough in any month of such crude oil cost increases is not in excess of 10 percent of the total amount of such crude oil cost increases as of the end of the calendar month in which the effective date of this paragraph occurs or any month thereafter;

(C) shall provide for the use of the same date in the computation of markup, margin, and posted price for all marketers or distributors of crude oil, residual fuel, and refined petroleum products at all levels of marketing and distribution; and

(D) shall not permit more than a direct proportionate distribution (by volume) to Number 2 oils (Number 2 heating oil and Number 2-D diesel fuel), aviation fuel of a kerosene or naphtha type, and propane produced from crude oil, of any increased costs of crude oil incurred by a refiner; except that the President may, by amendment to the regulation under subsection (a) of this section or by order, permit deviation from such proportionate distribution of costs, if the President finds that refinery operations justify such deviation and further finds that to permit such deviation is consistent with the attainment of the objectives in paragraph (1) and would not result in inequitable prices for any class of users of such product.

As used in this paragraph, the term "effective date of this paragraph" means the effective date specified in section 402(b) of the Energy Policy and Conservation Act.

(3) The President in promulgating the regulation under subsection (a) of this section shall give consideration to allo-

cating crude oil, residual fuel oil, and refined petroleum products in a manner which results in making available crude oil, residual fuel oil, or refined petroleum products to any person whose use of fuels other than crude oil, residual fuel oil, and refined petroleum products has been curtailed by, or pursuant to a plan filed in compliance with, a rule or order of a Federal or State agency, or where such person's supply of such other fuels is obtainable by reason of an abandonment of service permitted or ordered by a Federal or State agency.

Pro rata reductions; Presidential reports to Congress; allocation adjustments; LPG allocations

(c)(1) To the extent practicable and consistent with the objectives of subsections (b) and (d) of this section, the mandatory allocation program established under the regulation under subsection (a) of this section shall be so structured as to result in the allocation, during each period during which the regulation applies, of each refined petroleum product to each branded independent marketer, each nonbranded independent marketer, each small refiner and each independent refiner, and of crude oil to each small refiner and each independent refiner, in an amount not less than the amount sold or otherwise supplied to such marketer or refiner during the corresponding period of 1972, adjusted to provide —

(A) in the case of refined petroleum products, a pro rata reduction in the amount allocated to each person engaged in the marketing or distribution of a refined petroleum product if the aggregate amount of each product produced in and imported into the United States is less than the aggregate amount produced and imported in calendar year 1972; and

(B) in the case of crude oil, a pro rata reduction in the amount of crude oil allocated to each refiner if the aggregate amount produced in and imported into the United States is less than the aggregate amount produced and imported in calendar year 1972.

(2)(A) The President shall report to the Congress monthly, beginning not later than January 1, 1974, with respect to any change after calendar year 1972 in —

(i) the aggregate share of nonbranded independent marketers.

(ii) the aggregate share of branded independent marketers, and

(iii) the aggregate share of other persons engaged in the marketing or distributing of refined petroleum products.

of the national market or the regional market in any refined petroleum product (as such regional markets shall be determined by the President).

(B) If allocation of any increase of the amount of any refined petroleum product produced in or imported into the United States in excess of the amount produced or imported in calendar year 1972 contributes to a significant increase in any market share described in clause (i), (ii), or (iii) of subparagraph (A), the President shall by order require an equitable adjustment in allocations of such product under the regulation under subsection (a) of this section.

(3) The President shall, by order, require such adjustments in the allocations of crude oil, residual fuel oil, and refined petroleum products established under the regulation under subsection (a) of this section as may reasonably by necessary (A) to accomplish the objectives of subsection (b) of this section, or (B) to prevent any person from taking any action which would be inconsistent with such objectives.

(4) The President may, by order, require such adjustments in the allocations of refined petroleum products and crude oil established under the regulation under subsection (a) of this section as he determines may reasonably be necessary —

(A) in the case of refined petroleum products (i) to take into consideration market entry by branded independent markets and nonbranded independent marketers during or subsequent to calendar year 1972, or (ii) to take into consideration expansion or reduction of marketing or distribution facilities of such marketers during or subsequent to calendar year 1972, and

(B) in the case of crude oil (i) to take into consideration market entry by independent refiners and small refiners during or subsequent to calendar year 1972, or (ii) to take into consideration expansion or reduction of refining facilities of such refiners during or subsequent to calendar year 1972.

Any adjustments made under this paragraph may be made only upon a finding that, to the maximum extent practicable, the objectives of subsection (b) of this section are attained.

(5) To the extent practicable and consistent with the objectives of subsection (b) of this section, the mandatory allocation program established under the regulation under subsection (a) of this section shall not provide for allocation of LPG in a manner which denies LPG to any industrial user if no substitute for LPG is available for use by such industrial user.

Gasoline allocations; Presidential report to Congress

(d)(1) The provisions of the regulation under subsection (a) of this section respecting allocation of gasoline need not take effect until thirty days after the promulgation of such regulation, except that the provisions of such regulation respecting price of gasoline shall take effect not later than fifteen days after its promulgation.

(2) If —

(A) an order or regulation under section 203(a)(3) of the Economic Stabilization Act of 1970 applies to crude oil,

residual fuel oil, or a refined petroleum product and has taken effect on or before the fifteenth day after November 27, 1973, and

(B) the President determines that delay in the effective date of provisions of the regulation under subsection (a) of this section relating to such oil or product is in the public interest and is necessary to effectuate the transition from the program under such section 203(a)(3) to the mandatory allocation program required under this chapter,

he may in the regulation promulgated under subsection (a) of this section delay, until not later than thirty days after the date of the promulgation of the regulation, the effective date of the provisions of such regulation insofar as they relate to such oil or product. At the same time the President promulgates such regulation, he shall report to Congress setting forth his reasons for the action under this paragraph.

Entitlements

(e) Any provision of the regulation under subsection (a) of this section —

(1) which requires the purchase of entitlements, or the payment of money through any other similar cash transfer arrangement, the purpose of which is to reduce disparities in the crude oil acquisition costs of domestic refiners, and

(2) which is based upon the number of barrels of crude oil input, or receipts, or both, of any refiner,

shall not apply to the first 50,000 barrels per day of input, or receipts, or both, of any refiner whose total refining capacity (including the refining capacity of any person who controls, is controlled by, or is under common control with such refiner) did not exceed on January 1, 1975, and does not thereafter exceed 100,000 barrels per day. The preceding sentence shall not affect any provisions of the regulation under

subsection (a) of this section with respect to the receipt by any small refiner as defined in section 752(4) of this title of payments for entitlements or any other similar cash transfer arrangement.

Pub.L. 93-159, § 4, Nov. 27, 1973, 87 Stat. 629; Pub.L. 93-511, Dec. 5, 1974, 88 Stat. 1608; Pub.L. 94-99, § 2, Sept. 29, 1975, 89 Stat. 481; Pub.L. 94-133, § 1, Nov. 14, 1975, 89 Stat. 694; Pub.L. 94-163, Title IV, §§ 401(b)(1)-(3), 402(a), 403(a), 451, Dec. 22, 1975, 89 Stat. 946, 948.

§ 754. Administration and enforcement; delegation of authority; civil and criminal penalties

(a)(1) Except as provided in paragraph (2), (A) sections 205 through 207 and sections 209 through 211 of the Economic Stabilization Act of 1970 (as in effect on November 27, 1973) shall apply to the regulation promulgated under section 753(a) of this title, to any order under this chapter, and to any action taken by the President (or his delegate) under this chapter, as if such regulation had been promulgated, such order had been issued, or such action had been taken under the Economic Stabilization Act of 1970; and (B) section 212 (other than 212(b) and 213 of such Act shall apply to functions under this chapter to the same extent such sections apply to functions under the Economic Stabilization Act of 1970.

(2) The expiration of authority to issue and enforce orders and regulations under section 218 of such Act shall not affect any authority to amend and enforce the regulation or to issue and enforce any order under this chapter, and shall not effect any authority under sections 212 and 213 insofar as such authority is made applicable to functions under this chapter.

(3)(A) Whoever violates any provision of the regulation under section 753(a) of this title, or any order under this chapter shall be subject to a civil penalty —

(i) with respect to activities relating to the production, distribution, or refining of crude oil, of not more than $20,000 for each violation;

(ii) with respect to activities relating to the distribution of residual fuel oil or any refined petroleum product (other than activities entirely at the retail level), of not more than $10,000 for each violation; and

(iii) with respect to activities —

(I) entirely relating to the distribution of residual fuel oil or any refined petroleum product at the retail level, or

(II) activities not referred to in clause (i) or (ii) of subclause (I) of this clause, of not more than $2,500 for each violation.

(B) Whoever willfully violates any provision of such regulation, or any such order shall be imprisoned not more than 1 year, or —

(i) with respect to activities relating to the production or refining of crude oil, shall be fined not more than $40,000 for each violation;

(ii) with respect to activities relating to the distribution of residual fuel oil or any refined petroleum product (other than at the retail level), shall be fined not more than $20,000 for each violation;

(iii) with respect to activities relating to the distribution of residual fuel oil or any refined petroleum product at the retail level or any other person shall be fined not more than $10,000 for each violation;

or both.

(4) Any individual director, officer, or agent of a corporation who knowingly and willfully authorizes, orders, or performs any of the acts or practices constituting in whole or in part a violation of paragraph (3), shall be subject to penalties under this subsection without regard to any penalties to which that corporation may be subject under paragraph (3) except that no such individual director, officer, or agent shall be subject to imprisonment under paragraph (3), unless he also has knowledge, or reasonably should have known, of notice of noncompliance received by the corporation from the President.

(b) The President may delegate all or any portion of the authority granted to him under this chapter to such officers, departments, or agencies of the United States, or to any State (or officer thereof), as he deems appropriate.

Pub.L. 93-159, § 5, Nov. 27, 1973, 87 Stat. 633; Pub.L. 94-163, Title IV, § 452, Dec. 22, 1975, 89 Stat. 948.

§ 755. Impact on other laws

Actions under Economic Stabilization Act of 1970

(a) All action duly taken pursuant to clause (3) of the first sentence of section 203(a) of the Economic Stabilization Act of 1970 in effect immediately prior to the effective date of the regulation promulgated under section 753(a) of this title, shall continue in effect until modified pursuant to this chapter.

Preemption of State or local allocation regulations and orders

(b) The regulation under section 753 of this title and any order issued thereunder shall preempt any provision of any program for the allocation of crude oil, residual fuel oil, or any refined petroleum product established by any State or local government if such provision is in conflict with such regulation or any such order.

Defenses

(c) There shall be available as a defense to any action brought for breach of contract in any Federal or State court arising out of delay or failure to provide, sell, or offer for sale or exchange crude oil, residual fuel oil, or any refined petroleum product, that such delay or failure was caused solely by compliance with the provisions of this chapter or with the regulation or any order under this chapter.

Pub.L. 93-159, § 6, Nov. 27, 1973, 87 Stat. 633; Pub.L. 94-163, Title IV, § 453, Dec. 22, 1975, 89 Stat. 949.

§ 756. Monitoring of program by Federal Trade Commission

(a) During the forty-five day period beginning on the effective date on which the regulation under section 753 of this title first takes effect, the Federal Trade Commission shall monitor the program established under such regulation; and, not later than sixty days after such effective date, shall report to the President and to the Congress respecting the effectiveness of this chapter and actions taken pursuant thereto.

(b) For purposes of carrying out this section, the Federal Trade Commission's authority, under sections 46, 49, and 50 of this title to gather and compile information and to require furnishing of information, shall extend to any individual or partnership, and to any common carrier subject to the Acts to regulate commerce (as such Acts are defined in section 44 of this title).

Pub.L. 93-159, § 7, Nov. 27, 1973, 87 Stat. 635.

§ 757. Oil pricing policy

Presidential authority to promulgate amendment to regulation establishing ceiling prices applicable to any first sale of crude oil produced in United States; resulting maximum weighted average first sale price

(a) Not later than the first day of the second full calendar month following December 22, 1975, the President shall promulgate and make effective an amendment to the regulation under section 753(a) of this title which regulation, as amended, shall establish ceiling prices (or the manner of determining ceiling prices) applicable to any first sale of crude oil produced in the United States, such that the resulting actual weighted average first sale price for all such crude oil during such calendar month and each of the 39 months thereafter shall not exceed a maximum of $7.66 per barrel (hereinafter in this section referred to as the "maximum weighted average first sale price"), except as may be adjusted pursuant to this section.

Standards used in determining prices and classifications in Presidential amendment to regulation establishing ceiling prices; increase in price for any volume of old crude oil production; definition of old crude oil production

(b)(1) The regulation under section 753(a) of this title, as amended pursuant to subsection (a) of this section or by subsequent amendment thereto, may, subject to the limitations related to the maximum weighted average first sale price and other requirements of this section, provide for different ceiling prices (or manner of determining ceiling prices) for different classifications of crude oil produced in the United States. In providing for different ceiling prices (or the manner for determining such ceiling prices) and classifications for such crude oil, the President shall determine that such ceiling prices (or the manner for determining such ceiling prices) and such classifications —

(A) are administratively feasible; and

(B) are justified on the basis that such prices and such classifications are consistent with obtaining optimum production of crude oil in the United States.

(2) No amendment to the regulation under section 753(a) of this title made after December 22, 1975, may permit, in any month which begins after such date, an increase in the price for any volume of old crude oil production from any priorities, unless the President finds that such amendment —

(A) will give positive incentives for (i) enhanced recovery techniques, or (ii) deep horizon development, from such properties; or

(B) is necessary to take into account declining production from such properties; and

(C) is likely to result n a level of production from such properties beyond that which would otherwise occur if no such amendment were made.

(3) As used in paragraph (2), the term "old crude oil production" means that volume of crude oil produced and sold from a property in a month which is equal to or less than the volume of old crude oil, as defined in section 212.72 of title 10, Code of Federal Regulations (as in effect on November 1, 1975), produced and sold from such property in the months of September, October, and November of 1975, divided by 3.

Periodic Presidential determination regarding actual weighted average first sale price for crude oil; adjustments in maximum weighted average first sale price by Presidential amendment to regulation

(c)(1) Not later than 6 months after the effective date of the amendment promulgated under subsection (a) of this section, and not later than every 6 months thereafter, the Presi-

dent shall, on the basis of valid and reliable information (which may include information obtained by a valid and reliable sampling technique) of actual first sale prices of domestic crude oil, determine whether and the extent to which the actual weighted average first sale price for crude oil produced in the United States during any 6-month period or portion thereof for which data are available following the effective date of the amendment promulgated under subsection (a) of this section, exceeded or was less than the maximum weighted average first sale price of such crude oil specified in subsection (a) of this section as may be adjusted pursuant to this section.

(2) If the President finds, pursuant to paragraph (1) of this subsection, that the regulation under section 753(a) of this title, as amended, resulted in an actual weighted average first sale price in excess of the maximum weighted average first sale price specified in subsection (a) of this section as adjusted pursuant to this section, he shall amend the regulation to make such compensating adjustments as are necessary to result, in a corresponding period, in an actual weighted average first sale price for domestic crude oil sufficient to offset such excess.

(3) If the President finds, pursuant to paragraph (1) of this subsection, that the regulation under section 753(a) of this title, as amended, resulted in an actual weighted average first sale price less than the maximum weighted average first sale price specified in subsection (a) of this section as adjusted pursuant to this section, he may notwithstanding the requirements of this section pertaining to such maximum weighted average first sale price, amend the regulation to make such compensating adjustments in the regulation as are necessary to offset the deficiency in a corresponding period.

Effective date and considerations of adjusted GNP deflator and production incentive in determining adjustments in maximum weighted average first sale price by Presidential amendment to regulation; definition of adjusted GNP deflator; prerequisite for applicability of production incentive in adjustment

(d)(1) The amendment promulgated pursuant to subsection (a) of this section (or any subsequent amendment to the regulation under section 753(a) of this title) may provide for an adjustment to the maximum weighted average first sale price specified in subsection (a) of this section, such adjustment to begin no earlier than in the calendar month following the first month the amendment is in effect —

(A) to take into account the impact of inflation as measured by the adjusted GNP deflator; and

(B) as a production incentive;

except that any adjustment as a production incentive shall not permit an increase in the maximum weighted average first sale price in excess of 3 per centum per annum (compounded annually), unless modified pursuant to this section, and the combined effect of any such adjustments referred to in subparagraphs (A) and (B) shall not result in an increase in the maximum weighted average first sale price in excess of 10 per centum per annum (compounded annually), unless modified pursuant to this section.

(2) As used in this subsection, the term "adjusted GNP deflator" means the first revision of the quarterly percent change, seasonally adjusted at annual rates, of the most recent implicit price deflator for the gross national product which shall be computed and published for each calendar quarter by the Department of Commerce, subject to such additional modifications as the President shall make to exclude therefrom any amount which he determines is attributable solely and directly to increases which occur after December 22, 1975, in prices of imported crude oil, residual

fuel oil, or any refined petroleum product resulting from concerted action of two or more petroleum exporting countries.

(3) The adjustment as a production incentive referred to in paragraph (1)(B) may be made only on a finding by the President that such an adjustment is likely to provide incentive for —

(A) the discovery or development of high cost and high risk properties (including new wildcat properties, and properties located on the Outer Continental Shelf, properties located north of the Arctic Circle, deep wells and deep horizons in onshore or offshore properties, and properties operated by independent producers);

(B) the application of enhanced recovery techniques to producing properties to obtain a level of production higher than would otherwise occur from those properties but for such adjustment; or

(C) sustaining production from marginal wells, including production from stripper wells.

Submission to Congress of Presidential amendment to regulation; contents; finding to accompany additional adjustment in excess of allowable maximum; Congressional disapproval of amendment

(e)(1) Not earlier than 90 days after the effective date of the amendment promulgated under subsection (a) of this section and not earlier than 90 days after the date of any previous submission under this subsection, the President may submit to the Congress, in accordance with the procedures specified in section 6421 of Title 42, an amendment to the regulation promulgated under section 753(a) of this title which provides for (A) a production incentive adjustment to the maximum weighted average first sale price in excess of the 3 per centum limitation specified in subsection (d)(1) of this section, (B) a combined adjustment limitation in excess of the 10 per centum limitation specified in such subsection, or (C) both.

(2) Any such amendment shall be accompanied by a finding that an additional adjustment as a production incentive, or a combined adjustment limitation greater than permitted by subsection (d)(1) of this section, or both, is necessary to provide a more adequate incentive with respect to the matters referred to in subparagraphs (A), (B), or (C) of subsection (d)(3) of this section.

(3) Any such amendment shall not take effect if either House of Congress disapproves such amendment in accordance with the procedures specified in section 6421 of Title 42.

Presidential report to Congress on impact of amendment to economy and supplies; submission of amendment to Congress by President; contents; Congressional disapproval of amendment; submission of additional amendment upon disapproval; effect of no amendment to continue or modify adjustment as production incentive

(f)(1) On February 15, 1977, the President shall submit to the Congress a report containing an analysis of the impact of any amendment adopted pursuant to this section on the economy and on the supply of crude oil, residual fuel oil, and refined petroleum products.

(2) The President may submit with such report to the Congress, in accordance with the procedures specified in section 6421 of Title 42, an amendment to the regulation promulgated under section 753(a) of this title which —

(A) provides for the continuation or modification of the adjustment as a production incentive (referred to in subsection (d) of this section as may have been amended pursuant to subsection (e) of this section);

(B) provides for a modification of the combined adjustment limitation (referred to in subsection (d) of this section, as may have been amended pursuant to subsection (e) of this section);

(C) provides for adjustments with respect to both subparagraphs (A) and (B).

(3) Such amendment shall not take effect if either House of Congress disapproves such amendment in accordance with the procedures specified in section 6421 of Title 42.

(4) If any such amendment is disapproved by either House of Congress, the President may not later than 30 days after the date of such disapproval, submit one additional amendment in accordance with paragraph (2), which amendment shall not take effect if either House of Congress disapproves such amendment in accordance with the procedures specified in section 6421 of Title 42.

(5) If no amendment to continue or modify the adjustment as a production incentive takes effect, no such adjustment to the maximum weighted average first sale price thereafter may be taken into account in computing such price for any month which begins after (A) the date on which a submission could have been made under paragraph (2) but was not, or (B) the last date on which a submission was disapproved and no further submission pursuant to paragraph (4) could be made, except that the President may, pursuant to the procedures under subsection (e) of this section, submit an amendment to the regulation to provide for a prospective reinstatement of such adjustment or of a modification of such adjustment.

Presidential report to Congress on regulation in effect April 15, 1977; submission of amendment to Congress by President; criteria, time and contents of amendment; findings and data; Congressional disapproval of amendment; submission of additional amendment upon disapproval; limitations on further amendment of approved amendment

(g)(1) On April 15, 1977, the President shall submit to the Congress a report as to whether the regulation promulgated under section 753(a) of this title and in effect on such date will provide positive price incentives for the development of

the domestic crude oil production referred to in paragraph (2)(A) without lessening needed incentives for sustaining or enhancing crude oil production in the remainder of the United States.

(2) If the President determines that a price required to provide positive price incentives for the development of the domestic crude oil production referred to in paragraph (2)(A) would, because of the maximum weighted average first sale price specified in subsection (a) of this section, as adjusted, have the effect of reducing or limiting ceiling prices permited for crude oil produced in the remainder of the United States to levels which would result in less production of such crude oil than would otherwise occur, the President may, together with such report, or at any time thereafter not earlier than 90 days after any previous submission under this subsection, except as provided in paragraph (4), submit to the Congress in accordance with the procedures specified in section 6421 of Title 42 an amendment to the regulation promulgated under section 753(a) of this title which —

(A) excludes up to 2 million barrels a day of crude oil production transported through the trans-Alaska pipeline from the computation of the maximum weighted average first sale price specified in subsection (a) of this section; and

(B) establishes ceiling prices (or a manner of determining prices) for the first sale of crude oil production referred to in subparagraph (A) such that the actual weighted average first sale price for such production will not exceed the highest actual weighted average first sale price permitted under the regulation for significant volumes of any other classification of domestic crude oil.

(3) Any such amendment shall be accompanied by such findings and supporting rationale as the President determines justify such ceiling prices (or manner for determining such prices). Any amendment submited to the Congress pursuant

to this subsection shall not take effect if either House of Congress disapproves such amendment in accordance with the procedures specified in section 6421 of Title 42.

(4) If any such amendment is disapproved by either House of Congress, the President may not later than 30 days after the date of such disapproval submit one additional amendment in accordance wth paragraphs (2) and (3), which amendment shall not take effect if either House of Congress disapproves such amendment in accordance with the procedures specified in section 6421 of Title 42.

(5) If any amendment submitted by the President to the Congress pursuant to this subsection becomes effective, such amendment may thereafter be further amended by the President, subject to the procedures and requirements of paragraphs (2) and (3) of this subsection, except that no such further amendment shall be submitted earlier than January 1, 1978, and thereafter no earlier than 90 days after the date of any previous submission made under this paragraph.

Limitations on judicial review of amendment

(h) In any judicial review of an amendment required by this section to be submitted to the Congress in accordance with the procedures specified in section 6421 of Title 42, the reviewing court may not hold unlawful or set aside any such amendment on the ground that any findings made by the President were not adequate to meet the requirements of this section or of subparagraph (A), (E), or (F) of section 706(2) of title 5.

Pub.L. 93-159, § 8, as added Pub.L. 94-163, Title IV, § 401(a), Dec. 22, 1975, 89 Stat. 941.

§ 758. Passthroughs of cost price decreases; effective date

Not later than the first day of the second full calendar month following December 22, 1975, the regulation under

section 753(a) of this title shall provide for a dollar-for-dollar passthrough in prices at all levels of distribution from the producer through the retail level of decreases in the costs of crude oil, residual fuel oil, and refined petroleum products (including decreases in costs which result from a reduction in the price of crude oil produced in the United States because of the amendment to such regulation required under section 757(a) of this title).

Pub.L. 93-159, § 9, as added Pub.L. 94-163, Title IV, § 401(a), Dec. 22, 1975, 89 Stat. 946.

§ 759. Limitations on pricing authority of President

The President shall have no authority, under this chapter, or under the Energy Policy and Conservation Act, to prescribe minimum prices for crude oil (or any classification thereof), residual fuel oil, or any refined petroleum product.

Pub.L. 93-159, § 10, as added Pub.L. 94-163, Title IV, § 402(c), Dec. 22, 1975, 89 Stat. 947.

§ 760. Reevaluation of regulation; criteria; notice and hearing; transcript; Presidential report to Congress and promulgation of amendments to regulation

(a) Not later than 60 days after December 22, 1975, the President shall give appropriate notice and afford interested persons an opportunity to present written and oral data, views, and arguments respecting the appropriateness of, or the continuing need for, the application of any provision of the regulation promulgated under section 753(a) of this title as such provision relates to the attainment of the objectives specified in section 753(b)(1) of this title. A transcript shall be kept of any such oral presentations of data, views, and argument.

(b) The President shall, after consideration of such written and oral presentations and such other information as may be available to him —

(1) analyze such presentations and report thereon to the Congress within 120 days after December 22, 1975; and

(2) shall promulgate, pursuant to the limitations and authority under section 760a of this title, such amendment, or amendments, to the regulation promulgated under section 753(a) of this title as he determines are necessary or appropriate —

(A) to modify any provisions of such regulation in a manner which is consistent with the attainment, to the maximum extent practicable, of objectives specified in section 753(b)(1) of this title; or

(B) to eliminate any provisions of such regulation no longer necessary to provide for the attainment of such objectives.

Pub.L. 93-159, § 11, as added Pub.L. 94-163, Title IV, § 454, Dec. 22, 1975, 89 Stat. 950.

§ 760a. Conversion mechanism to standby authorities

Limitations on Presidential amendments to regulation

(a) The President may not amend the regulation under section 753(a) of this title in any manner which —

(1) exempts crude oil produced in the United States from any provision of such regulation required to be made a part of such regulation by section 757 of this title; or

(2) results in making such regulation, as so amended, inconsistent with any limitation or other requirement specified in section 757 of this title.

Criteria for Presidential amendment to regulation

(b) Except as provided in subsection (a) of this section, the President may amend the regulation under section 753(a) of this title if he determines that such amendment is consistent with the attainment, to the maximum extent practicable, of the objectives specified in section 753(b)(1) of this title and that the regulation, as amended, provides for the attainment, to the maximum extent practicable, of such objectives.

Prerequisites for promulgation of amendment to regulation authorizing exemptions from regulation; procedures; definition of refined product category; Congressional approval of amendment

(c)(1) Any such amendment which, with respect to a class of persons or class of transactions (including transactions with respect to any market level), exempts crude oil, residual fuel oil, or any refined petroleum product or refined product category from the provisions of the regulation under section 753(a) of this title as such provisions pertain to either (A) the allocation of amounts of any such oil or product, or (B) the specification of price or the manner for determining the price of any such oil or product, or both of the matters described in subparagraphs (A) and (B), may take effect only pursuant to the provisions of this subsection.

(2) The President shall submit any amendment referred to in paragraph (1) to the Congress in accordance with the procedures specified in section 6421 of Title 42. Any such amendment shall be accompanied by a specific statement of the President's rationale for such amendment and the matter described in subsection (d) of this section. Such an amendment —

(A) may apply only to one oil or one refined product category;

(B) may apply to the matters specified in either subparagraph (A) or (B) of paragraph (1) of this subsection, or both; and

(C) may provide for scheduled or phased implementation.

(3) As used in this section the term "refined product category" means —

(A) motor gasoline;

(B) Number 2 oils (Number 2 heating oil and Number 2-D diesel fuel);

(C) propane; or

(D) all or any portion of other refined petroleum products as a class (including natural gas liquids and natural gas liquid products, other than propane).

(4) Such an amendment shall not take effect if either House of Congress disapproves such amendment in accordance with the procedures specified in section 6421 of Title 42.

Supporting findings and statements by President to accompany submission to Congress of amendment of regulation authorizing exemptions from regulation; contents

(d)(1) The President shall support any amendment described in subsection (b) of this section which is transmitted to the Congress under subsection (c) of this section with a finding that such amendment is consistent with the attainment of the objectives specified in section 753(b)(1) of this title and in the case of —

(A) Any exemption described in subsection (c)(1)(A) of this section, with a finding that such oil or refined product category is no longer in short supply and that exempting such oil or refined product category will not have an adverse impact on the supply of any other oil or refined petroleum product subject to this chapter; and

(B) any exemption described in subsection (c)(1)(B) of this section, with a finding that competition and market forces are adequate to protect consumers and that exempting such oil or refined product category will not result in inequitable prices for any class of users of such oil or product.

(2) Any amendment which the President submits to the Congress under subsection (c) of this section shall be accompanied —

(A) by a statement of the President's views as to the potential economic impact (if any) of such amendment which, where practicable, shall include his views as to —

(i) the State and regional impacts of such amendment (including effects on governmental units);

(ii) the effects of such amendment on the availability of consumer goods and services; the gross national product; competition; small business; and the supply and availability of energy resources for use as fuel or as feedstock for industry; and

(iii) the effects on employment and consumer prices; and

(B) in the case of an exemption described in section (c)(1)(B) of this section by an analysis of the effects of such amendment on the rate of unemployment for the United States, the Consumer Price Index for the United States, and the implicit price deflator for the gross national product.

Limitation on judicial review of amendment

(e) In any judicial review of an amendment required by this section to be submitted to Congress in accordance with the procedures specified in section 6421 of Title 42, the reviewing

court may not hold unlawful or set aside any such amendment on the ground that any findings made by the President were not adequate to meet the requirements of subsection (c), (d), or (g) of this section or subparagraph (A), (E), or (F), of section 706(2) of Title 5.

Presidential authority to reimpose allocation and price requirements on any exempt oil or refined product category; subsequent exemptions

(f) With respect to any oil or refined product category which is exempted pursuant to the provisions of this section, the President shall have authority at any time thereafter to prescribe a regulation or issue an order respecting either the allocation of amounts, or the specification of price or the manner for determining the price of any such oil or refined product category upon a determination by him that such regulation or order is necessary to attain, and is consistent with, the objectives specified in section 753(b)(1) of this title. Any such oil or refined product category for which allocation or price requirements are reimposed under authority of this subsection may subsequently be exempted without regard to the provisions of subsection (c) of this section.

Exemptions for small refiners; modification of exemption by Presidential amendment of regulation; disapproval by Congress

(g) Notwithstanding the provisions of subsection (e) of section 753 of this title, the President may, if he determines that the exemption from payments for certain small refiners required by such subsection —

(1) results in unfair economic or competitive advantage with respect to other small refiners; or

(2) otherwise has the effect of seriously impairing the President's ability to provide in the regulation under section 753(a) of this title for the attainment of the objective specified in section 753(b)(1)(D) of this title and for the

attainment of those other objectives specified in section 753(b)(1) of this title;

submit, in accordance with the procedures specified in section 6421 of Title 42, an amendment to modify the regulation under section 753(a) of this title with respect to the provisions of such regulation as they relate to such exemption. Such amendment shall not take effect if disapproved by either House of Congress under the procedures specified in such section 6421 of Title 42.

Pub.L. 92-159, § 12, as added Pub.L. 94-163, Title IV, § 455, Dec. 22, 1975, 89 Stat. 950.

§ 760b. Standby purchase authority of President

Amendment to regulation to import or purchase foreign oil for resale in United States

(a) The President may, by amendment to the regulation under section 753(a) of this title, provide for and implement a procedure pursuant to which the United States may exercise the exclusive right to import and purchase all or any part of the crude oil, residual fuel oil, and refined petroleum products of foreign origin for resale in the United States.

Subsidy or preference to any importer, purchaser, or user, prohibited

(b) The authorities granted under this section shall not be used for the purpose, or with the effect, of providing a subsidy or preference to any importer, purchaser, or user.

Purchase and sale of foreign oil to be without profit or loss; exception

(c) In exercising any authorities granted under this section, the President shall endeavor to buy and sell without profit or loss, except that the President may, in individual cases, sell,

on a competitive bid basis, crude oil, residual fuel oil, or any refined petroleum product at a price above or below the cost of such oil or product if, in the judgment of the President, such sales may result in progress toward a lower price for oil sold in international commerce.

Submission of amendment to regulation to Congress for review; supporting explanation and findings by President to accompany submission; Congressional disapproval of amendment

(d) Any amendment to the regulation proposed to be implemented under this section shall be submitted to Congress for review under section 6421 of Title 42, together with a detailed explanation of the procedure to be employed and the need therefor and shall be supported by findings by the President that the exercise of such authority is likely to reduce prices for imported oils and products. Such amendment shall not take effect if disapproved by either House of the Congress in accordance with the procedures specified in section 6421 of Title 42 and any authority to purchase shall be subject to appropriations Acts.

Submission of Presidential feasibility report to Congress; contents

(e) The President shall submit, within 90 days after December 22, 1975, a report which evaluates the feasibility of reducing the price of crude oil, residual fuel oil, or refined petroleum products of foreign origin for resale in the United States by providing incentives for domestic producers who also import such oils or products into the United States, to work for the reduction of the price of such oils or products. The report shall specifically discuss whether increasing aggregate old crude oil prices by an amount related to any decrease in aggregate prices for such imported oils and products would serve as an incentive for domestic producers to reduce the price of such imported oils and products.

Pub.L. 93-159, § 13, as added Pub.L. 94-163, Title IV, § 456, Dec. 22, 1975, 89 Stat. 952.

§ 760c. Direct Presidential controls on refinery operations; procedures; criteria

The President may, by amendment to the regulation under section 753(a) of this title or by order, as may be consistent with the attainment, to the maximum extent practicable, of the objectives specified in section 753(b)(1) of this title, require adjustments in the operations of any refinery in the United Sates with respect to the proportions of residual fuel oil or any refined petroleum product produced through such operations if he determines such adjustments are necessary to assure the production of residual fuel oil or any refined petroleum product in such proportions as are necessary or appropriate to provide for the attainment, to the maximum extent practicable, the objectives specified in section 753(b)(1) of this title.

Pub.L. 73-159, § 14, as added Pub.L. 94-163, Title IV, § 457, Dec. 22, 1975, 89 Stat. 953.

§ 7860d. Presidential control of domestic oil and oil product inventories

Standby authority

(a) In addition to other authority provided for in this chapter to alleviate shortages of crude oil, residual fuel oil, and refined petroleum products, the President may, if he finds an existing or impending regional or national supply shortage of any fuel, by amendment to the regulation under section 753(a) of this title or by order, consistent with the attainment, to the maximum extent practicable, of the objectives specified in section 753(b)(1) of this title, require adjustments in the amounts of crude oil, residual fuel oil or any refined petroleum product which are held in inventory by persons who are engaged in the business of importing, producing, refining, marketing, or distributing such oils or products.

Exercise of authority

(b) The authority specified in subsection (a) of this section may be exercised to require either —

(1) a distribution from such inventories to specified persons or classes of persons at specified rates of distribution or to specified levels of inventory accumulation; or

(2) the accumulation of inventories at specified rates of accumulation or to specified levels,

as the President determines may be necessary or appropriate to provide for the attainment, to the maximum extent practicable, of the objectives of section 753(b)(1) of this title or as the President determines may be necessary or appropriate to carry out the obligations of the United Sates under the international energy program, as defined in section 6202 of Title 42.

Maintenance of inventories required under standby authority

(c) The authority specified in subsection (a) of this section may require the maintenance of inventories at levels greater or lesser than such person's normal business or operating requirements; except that such amounts shall not exceed the amount of oil or product, as the case may be, such person would use or distribute during any 90-day period of peak usage and in no case may the requirement to accumulate inventories be applied to any person in a manner which would necessitate such person making physical additions to storage facilities in order to comply with any such rule or order.

Pub.L. 93-159, § 15, as added Pub.L. 94-163, Title IV, § 458, Dec. 22, 1975, 89 Stat. 953.

§ 760e. Prohibition against willful accumulation of excess crude, etc., oil during severe energy supply interruption

Except as may be otherwise provided with respect to persons engaged in the business of producing, refining, distributing, or marketing crude oil, residual fuel oil, or any refined petroleum product pursuant to section 760d of this title or pursuant to requirements under section 6236 of Title 42 (relating to the Industrial Strategic Petroleum Reserve), the regulation under section 753(a) of this title shall prohibit any person, during a severe energy supply interruption (as defined in section 6202 of Title 42) from willfully accumulating crude oil, residual fuel oil, or any refined petroleum product in inventories, or otherwise, in amounts which are in excess of such person's reasonable needs (as such term shall be defined in such regulation).

Pub.L. 93-159, § 16, as added Pub.L. 94-163, Title IV, § 459, Dec. 22, 1975, 89 Stat. 954.

§ 760f. Allocation of asphalt; Presidential authority for amendment of regulation; subsequent exemption

(a) The President may amend the regulation under section 753(a) of this title to require, in a manner which he finds is consistent with the attainment, to the maximum extent practicable, of the objectives specified in section 753(b)(1) of this title, the allocation of asphalt in amounts specified in (or determined in the manner prescribed by), or at prices specified in (or determined in a manner prescribed by) such amendments to the regulation, or both.

(b) If the President exercises the authority under this section, he may thereafter amend the regulation under section 753(a) of this title to exempt asphalt from such regulation without regard to the provisions of section 750a of this title.

Pub.L. 93-159, § 17, as added Pub.L. 94-163, Title IV, § 460, Dec. 22, 1975, 89 Stat. 955.

§ 760g. Conversion date of Presidential authority from mandatory to discretionary to promulgate, etc., regulation; termination date of Presidential authority limitations; expiration date of Presidential authority to promulgate, etc., regulation or issue order; effect on pending actions

Notwithstanding any other provision of this chapter, at midnight on the conclusion of the 40th month in which the amendment under section 757(a) of this title is in effect, the President's authority to promulgate, make effective, and amend a regulation pursuant to section 753(a) of this title shall become discretionary rather than mandatory, and the limitations on the President's authority contained in sections 753(b)(2), 757 and 758 of this title shall terminate. The authority to promulgate and amend any regulation or to issue any order under this chapter shall expire at midnight September 30, 1981, but such expiration shall not affect any action or pending proceedings, administrative, civil, or criminal, not finally determined on such date, nor any administrative, civil, or ciminal action or proceeding, whether or not pending, based upon any act committed or liability incurred prior to such expiration date.

Pub.L. 93-159, § 18, as added Pub.L. 94-163, Title IV, § 461, Dec. 22, 1975, 89 Stat. 955.

§ 760h. Reimbursement to States for implementation of delegated responsibilities

Authorization of President

(a) The President is authorized to reimburse any State for expenses incurred by such State in carrying out any responsibilities delegated to such State by the President under the provisions of this chapter.

Source of reimbursement

(b) Such reimbursements may be paid from any funds appropriated for the purpose of carrying out responsibilities under this chapter, unless any appropriation Act specifically provides to the contrary.

Report to Congress by President; contents

(c) Not later than June 1, 1976, the President shall submit a report to the Congress analyzing and detailing the amount and nature of any reimbursements made to any State for expenses described in subsection (a) of this section incurred prior to such date and specifically recommending whether authorizations of additional funds for direct grants to States are necessary or appropriate for the continued operation of the reimbursement provisions authorized by this section.

Pub.L. 93-159, § 19, as added Pub.L. 94-163, Title IV, § 462, Dec. 22, 1975, 89 Stat. 955.

May 16, 1980

Hon. John C. Sawhill
Deputy Secretary of Energy
Forestal Building
1000 Independence Avenue, S.W.
Washington, D.C. 20585

Dear Mr. Sawhill:

We believe the Department of Energy should be concerned with the State of Connecticut's recent enactment of a so-called "gross earnings" tax levied upon the sale of petroleum products by refiners in that state. Both the legislative hearings during which this tax was considered and the final form of the tax itself suggest that Connecticut is attempting to take advantage of DOE regulations and rulings to transfer the burden of a tax based upon Connecticut consumption to out-of-state consumers.

Our concern is further amplified by the fact that other states such as New York, Rhode Island, etc., are considering similar tax proposals.

The Connecticut law provides as follows:

> "Any petroleum company which is engaged primarily in the refining and distribution of petroleum products and distributes such products to wholesale and retail dealers for marketing and distribution in this state shall pay a quarterly tax at the rate of two percent of gross earnings in each taxable quarter derived by such company from the sale of petroleum products in this state."

Taking advantage of the "equal application" rule (10 C.F.R. 212.83[h]) and the DOE's decision in *State of Oregon* (2 FEA Section 80.616 [1975]), Connecticut also included the following provision with the intent of preventing refiners from passing the tax on gasoline sales entirely through to their Connecticut customers:

> "It is not the intention of the general assembly that the tax imposed under section 1 of this act be construed as a tax upon purchasers of petroleum products, but that such tax shall be levied upon and be collectible from petroleum companies as defined in said section 1, and that such tax shall constitute a part of the operating overhead of such companies."

To prevent the pass through of the tax on the sale of so-called "exempt" petroleum products, the Connecticut law provides:

> "No petroleum company subject to the tax imposed under section 1 of this act shall raise its posted wholesale rack price in Connecticut for any petroleum product exempt from the federal Emergency Petroleum Allocation Act (P.L. 93-159) by

> an amount higher than the average amount by which such company raises its wholesale rack price for such product in all ports on the eastern coast of the United States."

While state taxation may not generally be of concern to the DOE, we believe action on your part is warranted where a state has so blatantly attempted to use and take advantage of DOE regulations and rulings to transfer to non-Connecticut consumers the burden of Connecticut taxes.

Notwithstanding Connecticut's attempt to disguise the true nature of this tax, it is in effect a wholesale sales tax similar to a percentage motor fuel excise tax. We believe DOE should take the position that this tax is a cost uniquely associated with the sale of petroleum products in Connecticut, allowing it to be added to our prices in Connecticut as a sales tax. In the alternative, DOE could act favorably upon requests for exception relief from the equal application rule.

As to Section 13(b) of the Connecticut law dealing with decontrolled products, we believe their attempt to regulate the price of these products is clearly preempted by the Emergency Petroleum Allocation Act. The fact that the price of these products is not controlled at this time does not mean they are not subject to control. In fact, the decision by DOE to remove controls from certain products places Connecticut's action in direct conflict with federal law and policy.

Because the Connecticut tax could serve as a precedent to other states, we believe it is important for DOE to take a position on the concerns expressed in this letter.

I would appreciate a meeting with you to discuss these concerns further.

Very truly yours,

Robert G. Weeks

Mr. Robert Weeks
Mobil Oil Corporation
150 East 42nd Street
New York, New York 10017

Dear Mr. Weeks:

This is in response to your letter to the Deputy Secretary regarding the State of Connecticut's "gross earnings" tax.

You are correct that generally this Department does not become involved in matters of State taxation of petroleum products.

Any attempt by a State in structuring its tax to capitalize upon a particular regulatory provision in our price regulations is not likely to be ultimately successful. Not only will all the price regulations expire by October 1981, but also the life of any particular regulatory provision may well be shorter. Indeed, the Economic Regulatory Administration has just proposed elimination of the equal application rule, which would eliminate the proscription against oil companies passing allowable tax costs through where they are incurred.

We do not agree with your contention that Section 13(b) of the Connecticut law is preempted by the Emergency Petroleum Allocation Act (EPAA). By its terms that section only applies to petroleum products "exempt" from the EPAA, which we take to mean currently decontrolled under that Act. We do not read the EPAA as preempting the entire field of price and allocation regulation of crude oil and petroleum products. Rather the Federal regulations supersede State law only where there is a legal conflict between them.

Sincerely,

Lynn R. Coleman
General Counsel

APPENDIX F

BANKS AND BANKING, 12 U.S.C. 1904, note

§ 211 of Economic Stabilization Act of 1970

"(a) The district courts of the United States shall have exclusive original jurisdiction of cases or controversies arising under this title, or under regulations or orders issued thereunder, notwithstanding the amount in controversy; except that nothing in this subsection or in subsection (h) of this section affects the power of any court of competent jurisdiction to consider, hear, and determine any issue by way of defense (other than a defense based on the constitutionality of this title or the validity of action taken by any agency under this title) raised in any proceeding before such court. If in any such proceeding an issue by way of defense is raised based on the constitutionality of this title or the validity of agency action under this title, the case shall be subject to removal by either party to a district court of the United States in accordance with the applicable provisions of chapter 89 of title 28, United States Code [chapter 89 of Title 28].

"(b) (1) There is hereby created a court of the United States to be known as the Temporary Emergency Court of Appeals, which shall consist of three or more judges to be designated by the Chief Justice of the United States from judges of the United States district courts and circuit courts of appeals. The Chief Judge of the Supreme Court of the United States shall designate one of such judges as chief judge of the Temporary Emergency Court of Appeals, and may, from time to time, designate additional judges for such court and revoke previous designations. The chief judge may, from time to time, divide the court into divisions of three or more members, and any such division may render judgment as the judgment of the court. Except as provided in subsection (d) (2) of this section, the court shall not have power to issue any interlocutory decree staying or restraining in whole or in part any provision of this title, or the

effectiveness of any regulation or order issued thereunder. In all other respects the court shall have the powers of a circuit court of appeals with respect to the jurisdiction conferred on it by this title. The court shall exercise its powers and prescribe rules governing its procedure in such manner as to expedite the determination of cases over which it has jurisdiction under this title. The court shall have a seal, hold sessions at such places as it may specify, and appoint a clerk and such other employees as it deems necessary or proper.

"(2) Except as otherwise provided in this section, the Temporary Emergency Court of Appeals shall have exclusive jurisdiction of all appeals from the district courts of the United States in cases and controversies arising under this title or under regulations or orders issued thereunder. Such appeals shall be taken by the filing of a notice of appeal with the Temporary Emergency Court of Appeals within thirty days of the entry of judgement by the district court.

"(c) In any action commenced under this title in any district court of the United State in which the court determines that a substantial constitutional issue exists, the court shall certify such issue to the Temporary Emergency Court of Appeals. Upon such certification, the Temporary Emergency Court of Appeals shall determine the appropriate manner of disposition which may include a determination that the entire action be sent to it for consideration or it may, on the issues certified, give binding instructions and remand the action to the certifying court for further disposition.

"(d) (1) Subject to paragraph (2), no regulation of any agency exercising authority under this title shall be enjoined or set aside, in whole or in part, unless a final judgment determines that the issuance of such regulation was in excess of the agency's authority, was arbitrary or capricious, or was otherwise unlawful under the criteria set forth in section 706(2) of title 5, United States Code [section 706(2) of Title 5], and no order of such agency shall be enjoined or set aside, in whole or in part, unless a final judgment determines that such order is in excess of

the agency's authority, or is based upon findings which are not supported by substantial evidence.

"(2) A district court of the United States or the Temporary Emergency Court of Appeals may enjoin temporarily or permanently the application of a particular regulation or order issued under this title to a person who is a party to litigation before it. Appeals from interlocutory decisions by a district court of the United States under this paragraph may be taken in accordance with the provisions of section 1292(b) of title 28, United States Code [section 1292(b) of Title 28]; except that reference in such section to the courts of appeals shall be deemed to refer to the Temporary Emergency Court of Appeals.

"(e) (1) Except as provided in subsection (d) of this section, no interlocutory enforcement, operation, or execution of this title, or any regulation or order issued thereunder, shall be granted by any district court of the United States or judge thereof. Any such court shall have jurisdiction to declare (A) that a regulation of an agency exercising authority under this title is in excess of the agency's authority, is arbitrary or capricious, or is otherwise unlawful under the criteria set forth in section 706(2) of title 5, United State Code [section 706(2) of Title 5], or (B) that an order of such agency is invalid upon a determination that the order is in excess of the agency's authority, or is based upon findings which are not supported by substantial evidence.

"(2) Any party aggrieved by a declaration of a district court of the United States respecting the validity of any regulation or order issued under this title may, within thirty days after the entry of such declaration, file a notice of appeal therefrom in the Temporary Emergency Court of Appeals. In addition, any party believing himself entitled by reason of such declaration to a permanent injunction restraining the enforcement, operation, or execution of such regulation or order may file, within the same thirty-day period, a motion in the Temporary Emergency Court of Appeals requesting such injunctive relief. Following consideration of such appeal or motion, the Temporary Emer-

gency Court of Appeals shall enter a final judgment affirming, reversing, or modifying the determination of the district court and granting such permanent injunctive relief, if any, as it deems appropriate.

"(f) The effectiveness of a final judgment of the Temporary Emergency Court of Appeals enjoining or setting aside in whole or in part any provision of this title, or any regulation or order issued thereunder, shall be postponed until the expiration of thirty days from the entry thereof, except that if a petition for a writ of certiorari is filed with the Supreme Court under subsection (g) within such thirty days, the effectiveness of such judgement shall be postponed until an order of the Supreme Court denying such petition become final, or until other final disposition of the action by the Supreme Court.

"(g) Within thirty days after entry of any judgement or order by the Temporary Emergency Court of Appeals, a petition for a writ of certiorari may be filed in the Supreme Court of the United States, and thereupon the judgment or order shall be subject to review by the Supreme Court in the same manner as a judgment of a United States court of appeals as provided in section 1254 of title 28, United State Code [section 1254 of Title 28]. The Temporary Emergency Court of Appeals, and the Supreme Court upon review of judgments and orders of the Temporary Emergency Court of Appeals shall have exclusive jurisdiction to determine the constitutional validity of any provision of this title or of any regulation or order issued under this title. Except as provided in this section, no court, Federal or State, shall have jurisdiction or power to consider the constitutional validity of any provision of this title or of any such regulation or order, or to stay, restrain, enjoin, or set aside, in whole or in part, any provision of this title authorizing the issuance of such regulations or orders, or any provision of any such regulation or order, or to restrain or enjoin the enforcement of any such provision.

"(h) The provisions of this section apply to any actions or suits pending in any court, Federal or State, on the date of

enactment, in which no final order or judgment has been rendered. Any affected party seeking relief shall be required to follow the procedures of this title.

APPENDIX G

U.S.C. 28 § 1341. Taxes by States

The district courts shall not enjoin, suspend or restrain the assessment, levy or collection of any tax under State law where a plain, speedy and efficient remedy may be had in the courts of such State.

June 25, 1948, c. 646, 62 Stat. 932.